

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

HSBC BANK PLC, et al.,

Defendants.

Adv. Pro. No. 09-01364 (SMB)

**ORDER DENYING ALPHA PRIME FUND LTD.'S MOTION FOR
JUDGMENT ON THE PLEADINGS AND GRANTING IN PART AND DENYING IN
PART THE TRUSTEE'S CROSS-MOTION**

THIS MATTER, having come before the Court on (1) Alpha Prime Fund Ltd.'s ("Alpha Prime") Motion For Judgment on the Pleadings (ECF No. 545) (the "Motion"); and (2) the Trustee's Cross-Motion For Severance and For Leave To Amend (ECF No. 548) (the "Cross-Motion"); and the Court having considered the parties' submissions in support of and in opposition to the Motion and the Cross-Motion; and the proceedings before the Court; and due

notice of the Motion and the Cross-Motion having been given, and it appearing that no other or further notice need be given; and the Court having determined that the legal and factual bases set forth in the Motion and Cross-Motion establish just cause for the relief granted herein; and after due deliberation, it is hereby

ORDERED THAT:

1. The Motion for Judgment on the Pleadings is hereby **DENIED**;
2. The portion of the Cross-Motion seeking leave to file a Second Amended Complaint against Alpha Prime is hereby **GRANTED**;
3. The portion of the Cross-Motion seeking the severance of the claims against Alpha Prime from the claims against HSBC Bank plc and HSBC Bank USA, N.A. (the “HSBC Defendants”) is hereby **DENIED WITHOUT PREJUDICE** to the Trustee’s ability to file a renewed motion for severance;
4. The Trustee shall file his Second Amended Complaint against Alpha Prime, in substantially the form attached to the Declaration of Oren J. Warshavsky within three days of the date of the entry of this Order;
5. Alpha Prime shall file its Answer within thirty days of the date of the filing of the Second Amended Complaint; and
6. The Amended Complaint dated December 5, 2010 (ECF No. 170) will remain in effect as against the HSBC Defendants without prejudice to the Trustee’s right to move for leave to amend his complaint against the HSBC Defendants, or those defendants who may be returned to the proceeding as a result of the lifting of the stay of issuance of the mandate in *In re Picard, Tr. for the Liquidation of Bernard L. Madoff Inv. Sec. LLC*, No. 17-2992 (L), (2d Cir. Apr. 23, 2019) (ECF No. 1503).

Dated: **September 23, 2019**
New York, New York.

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE